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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 95-174
	)	
Uniform Rate-Setting Methodology	)	DOCKET FILE COPY ORIGINAL

JOINT COMMENTS OF TELE-COMMUNICATIONS, INC.
AND
CONTINENTAL CABLEVISION, INC.

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SUMMARY

TCI and Continental (hereinafter "MSOs") support the Commission's proposal to adopt rules establishing an optional methodology for cable operators to implement uniform rates for both the basic service tier ("BST") and the cable programming service tier ("CPST") in multiple franchise areas.

Uniform rate-setting across multiple franchises will benefit subscribers, operators, local franchising authorities ("LFAs"), and the Commission by:

- minimizing consumer confusion produced by the current franchise-based system whereby subscribers with substantially the same service pay different rates;
- providing more and clearer information to subscribers, thereby enabling them to compare more readily the service offerings of cable operators with those of alternative video providers;
- facilitating region-wide promotion, thereby allowing cable operators to market their services more effectively; and
- improving cable operators' ability to provide timely and effective customer service, for example by reducing the number of phone inquiries on non-uniform pricing that customer service representatives have to handle.

Finally, uniform rate-setting will accommodate the evolving nature of the cable industry. The Commission's current franchise-based rate rules are the product of the fact that cable operators are authorized on a franchise basis. Now that clustering is commonplace and that operators continue to move to more uniform channel line-ups, the Commission should invoke its authority under 47 U.S.C. § 543(b)(2) to "periodically revise its rate rules in order to respond to industry developments."

MSOs recommend that the Commission adopt the following approach to setting uniform rates:

- Cable operators should be permitted to set uniform rates in franchises where both parts of the following two-part test are met:

  (1) the franchises have a "substantially similar" number of regulated channels, i.e., where the regulated channel count for each franchise in the group is within either 10% or two channels of the franchise in the group with the highest regulated channel count; and

  (2) the total of current BST, CPST, and (where applicable and at the operator's option) MPT rates in each franchise is no more than 5% higher than the weighted average uniform rate for the group.

- Where an operator wishes to set uniform rates for a group of franchises which do not meet the above two-part test, the Commission should entertain operator proposals for uniform rate-setting on a case-by-case basis.

While cable operators should be permitted to use either of the two uniform rate-setting methodologies proposed in the NPRM, MSOs favor calculating uniform rates using the averaging approach.

MSOs believe that this approach presents a streamlined method of achieving the numerous benefits of uniform rate-setting, while minimizing significant changes in service rates and the confusion associated with channel restructuring.

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**JOINT COMMENTS OF TELE-COMMUNICATIONS, INC.
AND
CONTINENTAL CABLEVISION, INC.**

Tele-Communications, Inc. and Continental Cablevision, Inc. (hereinafter "MSOs") hereby file their joint comments in the above-captioned proceeding in response to the Notice of Proposed Rulemaking ("NPRM") released on November 29, 1995.[1]

I. UNIFORM RATE-SETTING WOULD PRODUCE NUMEROUS BENEFITS FOR CONSUMERS, REGULATORY AUTHORITIES, AND CABLE OPERATORS.

For a variety of reasons, providing cable operators the ability to offer uniform rates across multiple franchise areas

[1] In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, Uniform Rate-Setting Methodology, FCC 95-472, released November 29, 1995. The deadline for comments was extended to February 12, 1996 by Public Notice, "Cable Services Bureau Announces Extension of Time to File Comments in Four Separate Proceedings," DA 96-11, released January 11, 1996.

would benefit subscribers, operators, and local franchising authorities ("LFAs").[2]

Uniform rates would minimize consumer confusion. Under the current rules, subscribers in neighboring communities -- perhaps even across the street from each other -- may receive precisely the same services and yet pay different regulated rates for those services. Similarly, subscribers moving to a nearby community served by the same operator may be required to pay significantly different rates for substantially similar services. A significant number of consumer inquiries relate to this non-uniform pricing dynamic. This situation may be alleviated by providing operators the ability to offer uniform rates. Of course, such a reduction in consumer confusion will benefit not only subscribers but also cable operators, LFAs, and the Commission, who will be able to avoid expending resources on consumer complaints about non-uniform pricing.

Uniform rates would enhance consumers' ability to decide among pricing arrangements offered by competitive services. As the Commission has recognized, competition in the multichannel video marketplace is increasing[3] and, with the passage of the Telecommunications Act of 1996, this trend will accelerate.[4] As

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[2] See NPRM at ¶ 12.

[3] See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, FCC 95-491 (released December 11, 1995), at ¶ 9.

[4] See, e.g., Telecommunications Act of 1996, § 302 (adding a new section to the Communications Act to allow (continued...)

powerful competitors enter the video delivery marketplace using DBS, MMDS, and other technologies, consumers will benefit from the ability to compare prices and make informed decisions. Although these alternative providers can advertise prices for their services, the current rules hinder cable operators from doing so. As a result, consumers lose the benefit of readily available comparisons which they use to make other personal buying decisions, whether it be choosing a long distance carrier, a cellular phone service, or a credit card.

Uniform rates would facilitate region-wide promotion, thereby allowing MSOs to market their services more efficiently. Uniform pricing would reduce rate card, billing, advertising, and administrative costs, as well as the risk of error from having to input and explain a multitude of rate codes.[5] Therefore, uniform pricing is consistent with sections 623(b)(2)(A) and 601(6) of the Communications Act which require the Commission to minimize unnecessary regulations and reduce administrative burdens on cable operators.

Uniform rates will improve cable operators' ability to provide timely and effective customer service, consistent with

[4](...continued)
telephone companies to provide video services directly to subscribers in their telephone service areas).

[5] The Commission recognized these benefits in the NPRM, stating that non-uniform pricing may cause "unnecessary administrative burdens for cable companies." NPRM at ¶ 1.

the Commission's customer service standards.[6] For example, the number of phone inquiries relating to non-uniform pricing issues will be reduced, thereby allowing customer service representatives to focus on better serving customers in other areas. The efficacy of such an arrangement is undermined if customer service representatives and consumers must sort out seemingly arbitrary price differences.

II. THE COMMISSION SHOULD ADOPT A SIMPLIFIED APPROACH TO SETTING INITIAL UNIFORM RATES.

MSOs recommend that the Commission adopt the following simplified approach to setting uniform BST and CPST rates:[7]

- Cable operators should be permitted to set uniform rates in franchises where both parts of the following two-part test are met:

  (1) the franchises have a "substantially similar" number of regulated channels, i.e., where the regulated channel count for each franchise in the group is within either 10% or two channels of the franchise in the group with the highest regulated channel count; and

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[6] See Customer Service Standards Order, 8 F.C.C.R. 2892, ¶¶ 45-56 (1993).

[7] MSOs do not address the issue of uniform rate-setting for cable equipment, since the recently enacted Telecommunications Act of 1996 contains a provision which bears directly on this question and will be the subject of a separate Commission proceeding. See Telecommunications Act of 1996, § 301(j) (directing the Commission to modify its rules and forms to allow cable operators to aggregate on a franchise, system, regional, or company level, their equipment costs into broad functional categories). MSOs stress, however, that since, under the Commission's rate regulations, service and equipment rates have already been unbundled, there is no reason why the Commission cannot go forward with establishing uniform rate-setting rules for BST and CPST service.

(2) the total of current BST, CPST, and (where applicable and at the operator's option) MPT rates in each franchise is no more than 5% higher than the weighted average uniform rate for the group.

- Where an operator wishes to set uniform rates for a group of franchises which do not meet the above two-part test, the Commission should entertain operator proposals for uniform rate-setting on a case-by-case basis.

Before describing their proposal in more detail, MSOs address two preliminary issues: 1) any uniform rate-setting scheme the Commission adopts should be content neutral; and 2) operators should have the option of excluding franchise-related costs prior to establishing uniform BST and CPST rates.

The Uniform Rate Scheme Should be Content Neutral.

The determination as to whether multiple franchises may be grouped for uniform rate-setting should be content neutral. In other words, each franchise's channel count, not its channel lineup, should be the critical variable. Any attempt to determine similarity based on content will necessarily involve difficult and complicated comparisons of programming. Such comparisons are inherently subjective and raise significant First Amendment concerns. Indeed, the Commission has repeatedly recognized the virtue of content neutrality for rate-setting purposes, and its current benchmark regulations are predicated on this principle. For example, the Commission has defined a "channel" for purposes of establishing per-channel cable rates in a content-neutral fashion:

> A channel is a unit of cable service identified and selected by a channel number or similar designation. Channels are not excluded from consideration based on

> their contents and may include, for example, directory or menu channels. Given the averaging process involved, no distinctions are made between high or low cost or high or low value channels.[8]

Similarly, in adopting its modified "going forward" rules, the Commission made clear that the $0.20 per-channel markup is independent of the type of programming or the program license fee associated with the added channel. The purpose of such content neutrality was to replicate the incentives operators would have to add channels in a competitive market, which accommodates both low and high cost services.[9]

Such a content-neutral approach is particularly warranted in this context, given the move by operators toward consistent channel line-ups across broader geographic areas. System rebuilds with higher capacity and fiber technology have permitted the transport of more signals over longer distances and have given operators the tools for providing the same channel line-up to a greater number of households. Consistent channel lineups make it easier to explain what services are available, allow operators to promote a channel by channel number or to advertise

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[8] Cable Television Rate Regulation, Questions and Answers, Question 15 (May 13, 1993).

[9] See Twelfth Order on Reconsideration, FCC 95-343 (released August 8, 1995), at ¶ 7 (eliminating the offset of home shopping sales commissions against the $0.20 per-channel markup, because such offset violated the Commission's content-neutrality principle).

a program as appearing on a particular channel, simplify TV guide listings, and facilitate advertising sales.[10]

While the move toward consistent channel line-ups may be inexorable, it is also evolutionary. An operator's ability to unify channel line-ups across multiple franchises is largely dependent on the channel capacity of each system, subscriber programming preferences in various franchises, among other factors. For this reason, it is critical that the Commission avoid conditioning an operator's ability to set uniform rates on the existence of identical channel line-ups across franchises. If the Commission were to adopt identical channel line-ups as a threshold test, it would severely limit the benefit of uniform rate-setting by substantially reducing the number of franchises that could qualify for such treatment.

Fortunately, the content-neutral approach recommended by MSOs avoids this problem while at the same time ensuring reasonable subscriber rates and serving as an additional incentive for cable operators to create consistent channel line-ups across multiple franchise areas.

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[10] As one example of this development, in its Midwest Region, Continental has moved from over 30 different channel line-ups to only four. In the Greater Dayton area, covering 61 franchises and 170,000 subscribers, Continental previously had 13 different channel line-ups. Post-rebuild, a single line-up prevails. Except for slightly differing must-carry and PEG channels, all subscribers receive the same cable programming services on the same channel slot in all 61 communities. In the Cleveland suburbs, even though the systems have not yet been rebuilt, the decision was made to standardize line-ups as much as possible because of the consumer and operational benefits discussed above. This experience is being replicated throughout Continental, TCI, and the rest of the cable industry.

Operators Should Have the Option of Excluding Franchise-Related Costs Prior to Establishing Uniform BST and CPST Rates.

Cable operators should have the option of excluding "franchise-related" costs from the calculation of uniform rates and itemizing such costs as a separate line item on the subscriber's bill.[11]

Where the variation in the franchise-related costs among the franchises to be grouped for uniform rate-setting purposes is significant, excluding franchise-related costs from the uniform rate-setting process can serve several purposes. Averaging franchise-related costs across multiple franchises in such situations would allow an LFA to avoid accountability for the franchise costs it imposed. If franchise-related costs are reported in a separate, unaveraged line item, subscribers will know which rates recover governmentally-imposed costs and which rates recover the operator's cost of providing service. Where costs are imposed by regulators, subscribers have a right to know the magnitude and assess the benefit of the cost. In other words, subscribers will benefit from the "sunshine effect" -- otherwise hidden costs are exposed to subscriber scrutiny.

In addition, MSOs note that Congress has approved itemization of franchise-related costs. Specifically, 47 U.S.C.

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[11] Franchise-related costs include franchise fees, the cost of PEG access channels, the cost of customer service standards that exceed federal requirements, and other costs of complying with franchise requirements. See 47 C.F.R. §§ 76.922(d)(3)(iv)(B, C). See also Thirteenth Rate Reconsideration Order, 78 R.R.2d (P&F) 1688, at ¶¶ 132-136 (1995).

§ 542(c) expressly provides cable operators the option to itemize franchise-related costs on subscriber bills. Congress's intent in adopting this provision was the promotion of "openness in billing" -- the exposure of hidden, unidentified fees and expenses to the public.[12]

At the same, time, however, operators should not be required to separate franchise-related costs and itemize them on the bill. For example, where the franchise-related costs among a group of franchises are the same or very similar, it may make sense, for marketing purposes, for the operator to average these costs along with the underlying rates. Since this dynamic will change from operator to operator and from franchise group to franchise group, it is necessary that the itemization of franchise-related costs follow the statutory guidelines and be allowed at the operator's election.[13]

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[12] 138 Cong. Rec. S561, 569 (daily ed. Jan. 29, 1992) (statement of Sen. Lott).

[13] The Commission should permit operators that set out franchise-related costs as a separate line item to advertise the uniform rate on a generic "fee plus" basis. For example, if the uniform rate for BST and CPST service is $25.00, the operator should be permitted to advertise the rate as "$25.00 + government costs." The Commission's current rule which allows a qualified "fee plus" advertising approach (e.g., "$25.00 plus a franchise fee of $0.28 to $0.70, depending on location," or "$25.28 to $25.70, depending on location," see Thirteenth Rate Reconsideration Order, 78 R.R.2d (P&F) 1688, at ¶ 139), increases consumer confusion, because consumers have no idea where they fall in the specified range of government costs.

A. Cable Operators Should Be Allowed to Establish Separate BST and CPST Uniform Rates in Franchises Where: (1) the Number of Regulated Channels is "Substantially Similar;" and (2) the Total of the Current Rates in Each Franchise is No More Than 5% Higher than the Weighted Average Uniform Rate for the Group.

MSOs propose that the Commission establish a rule allowing cable operators to set uniform BST and CPST rates in franchises which meet both prongs of a two-part test.[14]

The first part -- the "substantially similar test" -- would be satisfied where the franchises proposed to be included in a uniform rate group have a "substantially similar" number of regulated channels. Franchises would be deemed to have a "substantially similar" number of regulated channels if the regulated channel count for each franchise in the group is within either 10% or two channels of the franchise with the highest number of regulated channels. The "substantially similar" test would work as follows:

1. The operator identifies the franchises to be included in the uniform rate-setting process.

2. The operator calculates the "regulated channel count" in each such franchise, by adding the number of channels on the BST, CPST, and (where applicable and at the operator's option) MPT. If the operator elects not to itemize PEG and other franchise-related costs, PEG and franchise-required local origination channels would be included in this channel count. If these costs are itemized, these channels would not be counted.

3. Each franchise's regulated channel count is compared to the franchise in the group with the highest regulated channel count.

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[14] Operators should have the option of treating Migrated Product Tiers ("MPTs") created pursuant to Social Contracts or Rate Settlements negotiated with the Commission as separate CPSTs for purposes of uniform rate-setting.

4. If the difference in regulated channel count between the two franchises is within either 10% or two channels of the franchise with the highest regulated channel count, the regulated channel counts of the franchises are "substantially similar," and the franchise satisfies the first prong of the two-part test.

EXAMPLE #1:

One franchise has 40 regulated channels and the highest regulated channel count in the group is 43 channels. The difference in the regulated channel count is three channels, or 7% (i.e., 3 divided by 43). Since the 10% test is met, the regulated channel counts are substantially similar.

EXAMPLE #2:

One franchise has 17 regulated channels and the highest regulated channel count in the group is 19 channels. The difference in the regulated channel count is two channels, or 10.5% (i.e., 2 divided by 19). Since the two-channel test is met, the regulated channel counts are substantially similar.

The second part of the two-part test -- the "rate variation test" -- would be satisfied where the total of the current rates for each franchise in the group is no more than 5% higher than the weighted average uniform rate for the group of franchises. The "rate variation test" would work as follows:

1. For each franchise, the operator adds the current rates for the BST, CPST and (where applicable and at the operator's option) MPT.

2. The weighted average uniform rate for the entire group of franchises is calculated for each tier of service using the Commission's averaging proposal set forth as the second methodology in the NPRM. The weighted average uniform rates for the tiers are summed to arrive at the group's total weighted average uniform rate.

3. The total current rate in each franchise (#1) is compared to the total weighted average uniform rate (#2).

4. If the difference (#1 vs. #2) is no more than 5%, the franchise satisfies the rate variation prong of the two-part test. If a franchise fails the rate variation prong of the test, the franchise would be excluded from the group and steps #1 through #4 would be rerun with the remaining franchises.

EXAMPLE:

In "Franchise A" the BST rate is $10 and the CPST rate is $15. There are 100 BST subscribers and 98 CPST subscribers.

In "Franchise B" the BST rate is $9.75 and the CPST rate is $14.75. There are 100 BST subscribers and 97 CPST subscribers.

The weighted average uniform rate for the BST is:
(($10 x 100) + ($9.75 x 100))/200 = $9.875

The weighted average uniform rate for the CPST is:
(($15 x 98) + ($14.75 x 97))/195 = $14.875

The total weighted average uniform rate for BST and CPST = $24.75

Franchises A and B satisfy the rate variation test because the difference between the total current rate in each franchise and the total weighted average uniform rate is less than 5% as measured against each franchise's total current rate. (Franchise A variation = $0.25/$25.00 = 1.0%; Franchise B variation = $0.25/$24.50 = 1.02%).

This two-part test for determining which franchises the cable operator may include in the uniform rate-setting process presents a straightforward approach that will go a long way toward achieving rate uniformity and the attendant benefits described above.

First, it would allow operators to establish uniform rates in integrated systems that cover multiple franchises that have the same or very similar regulated channel counts.

Second, the rate change for subscribers in any given franchise under this approach would be minimal. The fact that the regulated channel count of the grouped franchises must be "substantially similar" and that a 5% rate variation standard is built into the test will ensure that subscribers in any franchise within the group will not experience significant rate changes as a result of the uniform rate-setting process.[15]

Finally, establishing the proposed two-part test as the determinant for inclusion in the franchise group avoids the complexities associated with selecting a specific geographic area within which uniform rate-setting will be permitted. The NPRM suggests that an ADI might be used and seeks comment on other possible areas.[16] Given the substantial variations that characterize the geographic composition of cable systems across the country and the evolving structure of cable systems, MSOs believe it is not practical for the Commission to attempt to establish a single geographic option for uniform rate-setting. If the Commission adopts the MSOs' proposal, it need not tackle the complicated question of how to define systems or geographic

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[15] See the Exhibit attached to these comments for a sample of the rate changes that would occur if the MSOs' two-part test and the Commission's averaging methodology were implemented to set uniform rates.

[16] See NPRM at ¶ 14.

areas. Rather, the regions will define themselves based on which franchises meet the two-part test set forth above. This flexible approach will yield a greater level of uniformity while avoiding the inefficiencies of a one-size-fits-all approach.

Under the MSOs' two-part test, unregulated franchises would be treated no differently than regulated franchises. If a franchise meets the two-part test set forth above, the operator may include the franchise in the group, regardless of regulatory status. If an unregulated franchise does not meet the two-part test, the franchise must be excluded from the uniform rate-setting process.

Given the rate protections built into the MSOs' two-part test, any change in rates in unregulated franchises resulting from the uniform rate-setting process should be presumed to be reasonable. Thus, should the LFA in an unregulated area decide at a later time to certify to regulate the BST rate, the operator should not be required to justify its averaged BST rate using the Commission's more franchise-specific rules; similarly, any complaint about an averaged CPST rate in an unregulated franchise area should only implicate the accuracy of the averaging, not the underlying rate.[17]

Such a presumption of reasonableness is consistent with the Commission's ruling in the Thirteenth Rate Reconsideration Order that presumed operators' CPST rates to be reasonable where such

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[17] See NPRM at ¶ 17 and n. 30.

rates had never been subject to CPST rate regulation.[18] In addition, since the rate variation prong of the two-part test ensures that only franchises whose rates are within a "zone of reasonableness" are included as input rates to the uniform rate-setting process, the resulting rates in all franchises of the group should be considered reasonable, since the averaging process described below ensures that this "zone of reasonableness" is maintained in the output rates.[19]

While MSOs believe the Commission should adopt flexible rules which allow operators to use either of the two uniform rate-setting methodologies proposed in the NPRM, MSOs favor calculating uniform rates using the averaging approach described in the Commission's second proposal.[20]

Given the fact that the two-part test allows the grouping only of franchises that have very similar rates to begin with, the averaging process will minimize the size of the rate change on both BST and CPST. To assist the Commission in understanding the real-world implications of this formula, the Exhibit attached to these comments shows what happens in several representative

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[18] Thirteenth Rate Reconsideration Order, 78 R.R.2d (P&F) 1688, ¶ 161 (1995).

[19] See Permian Basin Rate Cases, 390 U.S. 747 (1968) (ratemaking agencies need not identify the one particular reasonable rate in every situation; rather, all that is required is that rates are within a "zone of reasonableness"); FPC v. Hope Natural Gas, 320 U.S. 591, 600-01 (1944) (same).

[20] NPRM at ¶ 19. Continental notes that in accordance with its Social Contract, all BST rates have already been reduced by 15% to 20% below either rates in effect on April 3, 1995 or the benchmark rate.

franchises using actual channel counts and rates as of January 1, 1996.

In addition, the averaging approach is fully consistent with Commission precedent. The Commission's entire benchmark rate regulatory framework is based on an analysis of "the average rates of systems subject to effective competition."[21] Similarly, its modified "going forward" rules implement a $.20 per-channel markup which "reflects an average based on historical data."[22] The Commission also has pursued averaging approaches in the equipment context. For example, the Commission grandfathered operators that had averaged equipment and installation costs prior to April 3, 1993.[23] Likewise, in the Social Contract context, the Commission has permitted the averaging of equipment and installation costs on a state or regional basis.[24] Finally, the Commission allows operators electing cost-of-service regulation to use average equipment costs in order to promote administrative efficiencies.[25]

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[21] Rate Order, 8 F.C.C.R. 5631, ¶ 207 (1993).

[22] Going-Forward Order, 10 F.C.C.R. 1226, ¶ 78 (1994).

[23] See 47 C.F.R. § 76.924(c); First Rate Reconsideration Order, 9 F.C.C.R. 1164, at ¶ 65 and n. 96 (1993).

[24] See Continental Cablevision, Inc. Social Contract, FCC 95-95-335 (released August 3, 1995), section III.B.2.d., at p. 14; Time Warner Social Contract, FCC 95-478 (released November 30, 1995), section III.B., at p. 7.

[25] See Cost-of-Service Order, 9 F.C.C.R. 4527, at ¶¶ 224, 238-241 (1994).

Of course, the process of uniform rate-setting does not end after the initial uniform BST and CPST rates are established. Rather, certain modifications to the Commission's rules are required to accommodate uniform rate-setting on a going-forward basis. Preserving uniform rates over time will require that periodic increases allowed under the Commission's rate regulations be averaged across the group of franchises.[26] Under the MSOs' proposal, this could be accomplished by allowing such averaging as long as the regulated channel counts in the franchises continue to meet the "substantially similar" test described above. This going-forward process will become increasingly easier to implement as cable operators continue to work out identical channel line-ups in contiguous franchises and to make uniform rate changes and channel additions/deletions in such franchises.[27]

B. Where Operators Propose to Establish Uniform Rates for Franchises Which Do Not Meet the Two-Part Test, the Commission Should Entertain Operator Proposals for Uniform Rate-Setting on a Case-by-Case Basis.

MSOs propose that where operators wish to establish uniform rates in franchises that do not meet the two-part test described above, the Commission should approach uniformity in these circumstances on a case-by-case basis. The Commission has

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[26] While going-forward increases should be averaged across all franchises in the group, current Commission rules regarding limitations on the rate increases in a particular franchise (such as the $1.50 cap for the addition of "going-forward" channels) would continue to be imposed at the franchise level.

[27] <u>See</u> discussion at pp. 6-7, <u>supra</u> regarding the increasing move by operators to uniform channel line-ups.

previously concluded on numerous occasions that negotiations between operators and the Commission to create cable rates for both BST and CPST services can serve the public interest.[28] Adoption of a case-by-case approach would provide maximum flexibility and allow the Commission, LFAs, and subscribers to ensure that uniform rates achieved through this process are reasonable.

As with previous Rate Settlements and Social Contracts, the Commission and operator would negotiate cooperatively to produce a methodology for uniformity. Once a proposal has been agreed upon by the Commission and the operator, affected subscribers and LFAs would be given an opportunity to comment. This arrangement will allow the timely creation of uniform rates while providing LFAs and subscribers meaningful opportunity to participate in the process.

Of course, such negotiation between the operator and the Commission may be unnecessary to allow uniform rate-setting in certain circumstances. For example, if 49 of 50 contiguous franchises meet the MSOs' two-part test, the operator could petition the Commission for a waiver of the two-part eligibility test, under 47 C.F.R. § 1.3, to allow the operator to include the 50th franchise in the uniform rate-setting process.

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[28] See, e.g., Horry Telephone Cooperative, Inc. and Horry County, South Carolina Petition for Approval of Upgrade Incentive Plan, 10 F.C.C.R. 2110 (1995); In Re Social Contract for Continental Cablevision, Inc., FCC 95-335 (released August 3, 1995).

CONCLUSION

For the reasons set forth above, MSOs urge the Commission to expeditiously issue rules allowing cable operators to set uniform BST and CPST rates in franchises that meet the two-part test described herein. Where franchises that an operator wishes to group for uniform rate-setting purposes do not meet this two-part test, the Commission should entertain operator proposals for uniform rate-setting, as well as specific waiver petitions, on a case-by-case basis.

Respectfully submitted,

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Exhibit

Application of the Continental-TCI Uniform Rate-Setting Proposal to a Sample of Franchises

	Channels		BST					CPST					Total BST & CPST			
						Change in Rates					Change in Rates				Change in Rates	
Franchise	BST	CPST	BST Subs	Uniform Rate	1/1/96 Rate	$	%	CPST Subs	Uniform Rate	1/1/96 Rate	$	%	Uniform Rate	1/1/96 Rate	$	%
Franchise 1	18	27	1,242	$6.91	$6.93	(0.02)	-0.29%	1,222	$15.06	$15.45	(0.39)	-2.52%	21.97	22.38	(0.41)	-1.83%
Franchise 2	18	27	998	$6.91	$6.94	($0.03)	-0.43%	983	$15.06	$15.45	($0.39)	-2.52%	21.97	$22.39	($0.42)	-1.88%
Franchise 3	18	27	1,745	$6.91	$6.93	($0.02)	-0.29%	1,708	$15.06	$15.66	($0.60)	-3.83%	21.97	$22.59	($0.62)	-2.74%
Franchise 4	18	27	246	$6.91	$6.86	$0.05	0.73%	238	$15.06	$14.93	$0.13	0.87%	21.97	$21.79	$0.18	0.83%
Franchise 5	18	27	547	$6.91	$6.93	($0.02)	-0.29%	534	$15.06	$15.47	($0.41)	-2.65%	21.97	$22.40	($0.43)	-1.92%
Franchise 6	18	27	13,736	$6.91	$6.90	$0.01	0.14%	13,296	$15.06	$14.81	$0.25	1.69%	21.97	$21.71	$0.26	1.20%
Franchise 7	18	27	1,357	$6.91	$6.93	($0.02)	-0.29%	1,312	$15.06	$15.47	($0.41)	-2.65%	21.97	$22.40	($0.43)	-1.92%
Franchise 8	18	27	762	$6.91	$6.87	$0.04	0.58%	750	$15.06	$14.93	$0.13	0.87%	21.97	$21.80	$0.17	0.78%
Franchise 9	18	27	2,148	$6.91	$6.93	($0.02)	-0.29%	2,104	$15.06	$15.46	($0.40)	-2.59%	21.97	$22.39	($0.42)	-1.88%
Total			22,781					22,147								
Simple Average	18	27	2,531	$6.91	$6.91			2,461	$15.06	$15.29			21.97	$22.21		
Weighted Average				$6.91	$6.91				$15.06	$15.06			21.97	$21.97		
Range: High	18	27		$6.91	$6.94	$0.05	0.73%		$15.06	$15.66	$0.25	1.69%	21.97	$22.59	$0.26	1.20%
Range: Low	18	27		6.91	6.86	(0.03)	-0.43%		15.06	14.81	(0.60)	-3.83%	21.97	21.71	(0.62)	-2.74%

Franchise	BST	CPST	BST Subs	Uniform Rate	1/1/96 Rate	$	%	CPST Subs	Uniform Rate	1/1/96 Rate	$	%	Uniform Rate	1/1/96 Rate	$	%
Franchise 1	21	25	25,346	$9.04	$8.77	0.27	3.08%	24,855	$17.85	$17.73	0.12	0.68%	26.89	26.50	0.39	1.47%
Franchise 2	21	25	18,286	$9.04	$8.77	$0.27	3.08%	19,551	$17.85	$17.73	$0.12	0.68%	26.89	$26.50	$0.39	1.47%
Franchise 3	21	25	13,545	$9.04	$8.64	$0.40	4.63%	13,247	$17.85	$17.73	$0.12	0.68%	26.89	$26.37	$0.52	1.97%
Franchise 4	21	25	23,406	$9.04	$9.23	($0.19)	-2.06%	22,769	$17.85	$17.90	($0.05)	-0.28%	26.89	$27.13	($0.24)	-0.88%
Franchise 5	21	25	4,086	$9.04	$9.23	($0.19)	-2.06%	3,956	$17.85	$17.90	($0.05)	-0.28%	26.89	$27.13	($0.24)	-0.88%
Franchise 6	21	25	14,848	$9.04	$9.23	($0.19)	-2.06%	14,430	$17.85	$17.90	($0.05)	-0.28%	26.89	$27.13	($0.24)	-0.88%
Franchise 7	21	25	4,365	$9.04	$9.19	($0.15)	-1.63%	4,226	$17.85	$17.91	($0.06)	-0.34%	26.89	$27.10	($0.21)	-0.77%
Franchise 8	21	25	18,691	$9.04	$9.23	($0.19)	-2.06%	18,176	$17.85	$17.90	($0.05)	-0.28%	26.89	$27.13	($0.24)	-0.88%
Franchise 9	21	25	20,919	$9.04	$9.19	($0.15)	-1.63%	20,270	$17.85	$17.91	($0.06)	-0.34%	26.89	$27.10	($0.21)	-0.77%
Franchise 10	21	25	12	$9.04	$9.19	($0.15)	-1.63%	12	$17.85	$17.91	($0.06)	-0.34%	26.89	$27.10	($0.21)	-0.77%
Franchise 11	21	25	522	$9.04	$8.64	$0.40	4.63%	505	$17.85	$17.73	$0.12	0.68%	26.89	$26.37	$0.52	1.97%
Franchise 12	21	25	3,433	$9.04	$9.19	($0.15)	-1.63%	3,311	$17.85	$17.91	($0.06)	-0.34%	26.89	$27.10	($0.21)	-0.77%
Franchise 13	21	25	1,410	$9.04	$9.19	($0.15)	-1.63%	1,421	$17.85	$17.91	($0.06)	-0.34%	26.89	$27.10	($0.21)	-0.77%
Total			148,869					146,729								
Simple Average	21	25	11,451	$9.04	$9.05			11,287	$17.85	$17.85			26.89	$26.90		
Weighted Average				$8.87	$8.86				$17.85	$17.83			26.72	$26.69		
Range: High	21	25		$9.04	$9.23	$0.40	4.63%		$17.85	$17.91	$0.12	0.68%	26.89	$27.13	$0.52	1.97%
Range: Low	21	25		9.04	8.64	(0.19)	-2.06%		17.85	17.73	(0.06)	-0.34%	26.89	26.37	(0.24)	-0.88%

Application of the Continental-TCI Uniform Rate-Setting Proposal to a Sample of Franchises

	Channels		BST			Change in Rates		CPST			Change in Rates		Total BST & CPST		Change in Rates	
Franchise	BST	CPST	BST Subs	Uniform Rate	1/1/96 Rate	$	%	CPST Subs	Uniform Rate	1/1/96 Rate	$	%	Uniform Rate	1/1/96 Rate	$	%
Franchise 1	29	34	19,597	$9.74	$9.74	0.00	0.00%	19,223	$15.66	$15.58	0.08	0.51%	25.40	25.32	0.08	0.32%
Franchise 2	29	34	6,880	$9.74	$9.74	$0.00	0.00%	6,806	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 3	29	34	4,565	$9.74	$9.74	$0.00	0.00%	4,527	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 4	29	34	5,126	$9.74	$9.74	$0.00	0.00%	5,081	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 5	29	34	1,377	$9.74	$9.74	$0.00	0.00%	1,371	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 6	29	34	2,816	$9.74	$9.74	$0.00	0.00%	2,777	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 7	29	34	8,631	$9.74	$9.94	($0.20)	-2.01%	8,564	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 8	29	34	6,460	$9.74	$9.94	($0.20)	-2.01%	6,375	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 9	29	34	10,421	$9.74	$9.94	($0.20)	-2.01%	10,345	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 10	29	34	2,246	$9.74	$9.74	$0.00	0.00%	2,221	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 11	29	34	2,384	$9.74	$9.74	$0.00	0.00%	2,387	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 12	29	34	667	$9.74	$9.94	($0.20)	-2.01%	643	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 13	29	34	45	$9.74	$9.74	$0.00	0.00%	45	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 14	29	34	498	$9.74	$9.94	($0.20)	-2.01%	494	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 15	29	34	1,351	$9.74	$9.94	($0.20)	-2.01%	1,328	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 16	29	34	521	$9.74	$9.94	($0.20)	-2.01%	505	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 17	29	34	50	$9.74	$9.94	($0.20)	-2.01%	49	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 18	29	34	460	$9.74	$9.94	($0.20)	-2.01%	455	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 19	29	34	2,441	$9.74	$9.74	$0.00	0.00%	2,426	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 20	29	34	4,633	$9.74	$9.74	$0.00	0.00%	4,599	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 21	29	34	3,666	$9.74	$9.74	$0.00	0.00%	3,622	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 22	29	34	1,488	$9.74	$9.74	$0.00	0.00%	1,482	$15.66	$15.58	$0.08	0.51%	25.40	$25.32	$0.08	0.32%
Franchise 23	29	34	3,614	$9.74	$9.94	($0.20)	-2.01%	3,601	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 24	29	34	3,556	$9.74	$9.94	($0.20)	-2.01%	3,532	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 25	29	34	455	$9.74	$9.94	($0.20)	-2.01%	445	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 26	29	34	188	$9.74	$9.94	($0.20)	-2.01%	186	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 27	29	34	24	$9.74	$10.25	($0.51)	-4.98%	24	$15.66	$16.40	($0.74)	-4.51%	25.40	$26.65	($1.25)	-4.69%
Franchise 28	29	34	11,135	$9.74	$9.94	($0.20)	-2.01%	11,056	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 29	29	34	7,862	$9.74	$9.94	($0.20)	-2.01%	7,778	$15.66	$15.90	($0.24)	-1.51%	25.40	$25.84	($0.44)	-1.70%
Franchise 30	29	34	183	$9.74	$10.05	($0.31)	-3.08%	181	$15.66	$16.07	($0.41)	-2.55%	25.40	$26.12	($0.72)	-2.76%
Franchise 31	29	34	972	$9.74	$9.46	$0.28	2.96%	963	$15.66	$16.39	($0.73)	-4.45%	25.40	$25.85	($0.45)	-1.74%
Franchise 32	29	34	18,886	$9.74	$9.74	$0.00	0.00%	18,516	$15.66	$15.20	$0.46	3.03%	25.40	$24.94	$0.46	1.84%
Franchise 33	29	34	3,246	$9.74	$9.31	$0.43	4.62%	3,201	$15.66	$15.66	$0.00	0.00%	25.40	$24.97	$0.43	1.72%
Franchise 34	29	34	3,410	$9.74	$9.31	$0.43	4.62%	3,382	$15.66	$15.66	$0.00	0.00%	25.40	$24.97	$0.43	1.72%
Franchise 35	29	34	409	$9.74	$9.31	$0.43	4.62%	404	$15.66	$15.66	$0.00	0.00%	25.40	$24.97	$0.43	1.72%